

**APPROVED: 7/16/12**

**MINUTES OF THE  
CONSOLIDATED ZONING BOARD OF APPEALS  
OF THE  
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS  
JUNE 18, 2012**

A regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Monday, June 18, 2012, at 7:00 P. M.

**THERE WERE PRESENT:**

**Board Members:**

David Weyant, Chairman  
Jack Jannarone, Deputy Chairman  
Tim Donnery  
Tim Doherty

**Absent:**

Tony Galu  
Ray Devereaux  
Ralph Montellese

Alyse Terhune, Attorney (Jacobowitz & Gubits, LLP)

**ALSO PRESENT:** John Hager, Building Inspector, Mike McMahon, Mike Nezendy, Gregg Lawless and Chris Conforti.

MR. WEYANT: I am going to open the Consolidated Zoning Board of Appeals Meeting for the Town of Highlands for June 18, 2012, and note that the members that are absent tonight are Mr. Galu, Mr. Montellese, and Mr. Devereaux. We first need to approved minutes of our previous meeting of May 21, 2012. They have been sent to you, are we happy with them?

MR. DOHERTY: I have no problem with them.

**A motion was made to adopt the Minutes for May 21, 2012.**

**Motion: Mr. Doherty   Seconded: Mr. Jannarone   Approved**

MR. WEYANT: Michael McMahon, please come up and have a seat. Mr. McMahon, you filed an application to put a roofed patio on property that you own on 55 West Street, Highland Falls. Please explain briefly to the Board what you want to do.

MR. McMAHON: Yes, sir. What I want to do is a patio, but I want to make it so I can eventually finish it into a room. I want to put a patio and a roof and put the footings in just in case I want to eventually finish into a room.

MR. WEYANT: In order to do this you need some variances from this Board. It appears to be three (3) of them.

MR. McMAHON: Two (2).

MR. WEYANT: Well, let's take a look. We have the side yard variance that you need of three (3) feet. We also have a total side yard setback requirement that you will need and then we have the lot area percentage. We wind up with three (3).

MR. McMAHON: Okay.

MR. WEYANT: I would ask: Do you have a survey of this property when you bought it?

MR. McMAHON: No sir.

MR. WEYANT: You never had a survey done at all?

MR. McMAHON: No, I checked when I had my front porch done and there was none.

MR. WEYANT: It would really be helpful to us. Would there be a problem with you getting one?

MR. McMAHON: It depends how much it is. If it is that much money, I might just wash the whole project.

MR. WEYANT: Just because of that?

MR. McMAHON: Yes. I would have to look at the pricing of that.

MR. WEYANT: Do any of the Board Members have a similar feeling or are you all right with what he has here?

MR. JANNARONE: The problem is if we approve a variance and it turns out that your lot line is slightly off then there is a problem.

MR. McMAHON: That is the Crill's property. If they have a map that shows where their property ends and mine begins, would that help me?

MR. WEYANT: No. What we are looking for is you have the existing house mapped out here and where your addition will go on. What I am concerned about are the dimensions from the lot lines because that is what we need to approve. We have to be exact. That is why I think a survey would be something that you would want.

MR. McMAHON: Okay, I will look into a survey.

MR. WEYANT: What we will do is set you for a Public Hearing for our next meeting which will be July 16, 2012. We would need that survey roughly ten days before then. If you could get it to Mr. Hager's office, then we can review it.

MR. McMAHON: Okay.

MR. WEYANT: If for some reason you feel you don't want to go ahead, please notify him of that, too. That way I will know that we won't be involved in it.

MR. McMAHON: Okay.

MR. DONNERY: Dave, on the back page of the application, where did you get this paperwork, the county?

MR. McMAHON: I got that from the Town.

MR. WEYANT: This is what was bothering me, because we don't really have an exact survey.

MS. TERHUNE: Is this part of a subdivision?

MR. McMAHON: No.

MR. HAGER: There is probably a subdivision map on file. It is probably 100 years old.

MR. DONNERY: I was just going to say, do you have anything in your office that would help him out?

MR. HAGER: This is all that I have - a tax map.

MS. TERHUNE: So there might be a subdivision map on file?

MR. HAGER: The tax maps have reference to subdivision maps but they are very old. The lots were divided many years ago. I have to think that a subdivision map would show where the buildings are located.

MS. TERHUNE: Your property is obviously not State. The setbacks are on either side. If you don't have a survey, we would have to see surveys from either side.

MR. DOHERTY: Who do you have Pete Crill on one side?

MR. McMAHON: Yes sir.

MR. DOHERTY: Who is on the other side?

MR. McMAHON: Vicky Zielinski. And then behind me are Pat Patterson and another guy to the left of him.

MS. TERHUNE: I am not sure how else you would establish the actual property lines without a survey. Unless perhaps you got surveys on either side if they had existing surveys and then you had confirmation from either the Building Inspector or even the Board that yes, it is this far back. I don't know which would be easier for the applicant.

MR. WEYANT: That is what I am concerned about, getting our numbers right.

MR. DONNERY: How did you come up with the numbers of 15 feet, 11 feet and 5 feet?

MR. McMAHON: I measured off from where I was going to build the addition off the addition to the fence line.

MR. DONNERY: So you are all fenced in?

MR. McMAHON: Yes, I am all fenced in.

MR. DONNERY: Then you are probably wrong. If you put up a fence right, you have to put it totally on your property, so you probably gained property.

MR. DOHERTY: Those fences in the back belong to Pat and Pete has the other one. I don't know about the other one.

MR. WEYANT: Let's see what you can do between now and then. Let John know either way what you want to do.

MR. McMAHON: I will look into a survey.

MR. WEYANT: Fine. Like I said, if you are going to go ahead with this, July 16 is the Public Hearing. There are things that John can tell you that you need to do in the way of mailings and postings of signs. He can tell you that. That information is part of the application, too.

MR. McMAHON: Thank you.

MS. TERHUNE: He might be able to go to a surveyor with his deed and the surveyor could do a deed plotting instead of an actual field survey.

MR. DOHERTY: He is going to spend \$400 no matter what he does.

MR. DONNERY: He said he bought the house in 2006 so he has to have something.

MS. TERHUNE: He has a deed – it probably has a deed description. I would be surprised if he did not have a survey at that time.

MR. DONNERY: Your bank would never give you a loan.

MR. HAGER: He has a map, he either does not know where it is or he can't find it. I explained to him that you may need it.

MR. WEYANT: Mr. Lawless and Mr. Conforti. You jointly own 8 McCullums?

MR. LAWLESS: Correct.

MR. WEYANT: Okay. Tell us what is there now. What was the property used for originally?

MR. LAWLESS: I believe it was a service station. Originally it looked like it was five (5) bays of a service station.

MR. WEYANT: So you have five 5 bays. I see some garage doors.

MR. LAWLESS: Originally.

MR. WEYANT: Right now, what is it?

MR. LAWLESS: Currently, it is four (4) bays. The fifth bay they created a stairwell to the apartment above.

MR. WEYANT: So there is an existing apartment upstairs.

MR. LAWLESS: Correct. Two story.

MR. WEYANT: There is a garage downstairs.

MR. LAWLESS: There are four (4) bays of garage downstairs.

MR. DOHERTY: This is that brown house on the right hand side on the way down.

MR. LAWLESS: Correct.

MR. DOHERTY: Then it got flooded out. I know exactly which house it is.

MR. WEYANT: So your plans are to make it into a two family.

MR. LAWLESS: Yes.

MR. WEYANT: The reason we have to deal with this is because you are changing the use because it is in the business zone now. It would have to go to residential. Or you are creating a residential property within a business zone. Then we have a variance necessary for the floor area. Am I right so far?

MR. LAWLESS: Correct.

MR. WEYANT: I am going to ask the same question of you that I did with the previous applicant. Do you have a survey for this?

MR. LAWLESS: No, not currently.

MR. WEYANT: Again, I think we should have one here. You are going to go to the Planning Board anyway and I am sure they are going to want one.

MR. LAWLESS: We will provide one.

MR. WEYANT: I would like to have one for our next meeting. The other thing with a use variance is we are going to get involved with financials.

MS. TERHUNE: You will have to show by competent evidence that you can't make a return on your investment without a use variance.

MR. WEYANT: Right. Reading from the application that you should have, it says that "...proof submitted must be actual dollars and cents proof." You have to show us that it can't yield a reasonable return unless you turn this into a residential property based on its present use. There is a stricter requirement for a use variance than the normal area variances which you are familiar with on other properties.

MR. HAGER: My interpretation is that currently it is not commercial property even though it is in a business zone. It is a single family home which is a permitted use even though it has garage bays and accessory space above. I don't think it is being used commercially. It may have been years ago. So you are not actually changing it to a residential use, you are expanding a residential use.

MR. WEYANT: So you would say that it preceded Code even though it is in a business district?

MR. HAGER: I would say that yes, it probably does pre-date Code. The conversion from business to residential probably pre-dates Code. Also, a single family residence is a permitted use in that district. The two-family use is the use that is not permitted.

MR. WEYANT: Within the business district, a one family is permitted. I did not know that. The change to a two-family brings in the use variance.

MS. TERHUNE: That is correct. If they were changing it back to a single family residence, it would not need a use variance.

MR. HAGER: That is what it currently being used as.

MR. DOHERTY: Is all of McCullums zoned business or just the Main Street side?

MR. HAGER: No, all of it.

MR. DOHERTY: Does that extend up to Center Street, as well.

MR. HAGER: Yes. Center Street is also.

MR. DOHERTY: We may want to somewhere down the line address that and have the Town or Village change that over. That is kind of ridiculous.

MR. LAWLESS: We are surrounded by multiple family homes. There is a five (5) family home across the street. Everything is a multiple family around us. The use itself as a business would not be practical to the neighbors. That road is so narrow. We have talked to a couple of people to utilize it as a business and nobody wants to come down that street because it is so small with a truck or a trailer. Have any of you come down that street.

MR. WEYANT: Tim knows the area.

MR. JANNARONE: I would ask about parking.

MS. TERHUNE: Will you have adequate parking for two apartments?

MR. LAWLESS: More than adequate, it is two lots. As a matter of fact we are supporting the neighborhood with our parking lot. This will be an issue that we will have to deal with.

MR. DOHERTY: I know the lot well and they have more than enough space.

MR. WEYANT: I will set a Public Hearing for you for July 16, 2012. You have been through this before, Mr. Lawless, so you know what is involved in the way of mailings and postings. Please have the survey done so we will have that for our next meeting.

MR. LAWLESS: No problem. I will get the letter from John for the mailings, correct?

MR. HAGER: We will have that for you.

MR. JANNARONE: Is the upstairs occupied now?

MR. LAWLESS: It is not. We are doing some mild renovations to it now. There is a lot of water damage. We have had to take up some floors and there is some mold and some little stuff to get it cleaned up.

MR. DONNERY: In order for us to give you a use variance, you have to answer these four (4) questions on this card. Number 4: “The alleged hardship has not been self created.” You will have to come up with some creative thinking on that one.

MR. LAWLESS: That is in the application – those four (4) questions?

MS. TERHUNE: I can send copies of those questions to John and he can provide them to the applicant.

MR. LAWLESS: Thank you very much.

MR. WEYANT: I gave you all a notice from the Orange County Planning Department. If you have any interest at all in attending this workshop on Friday, June 29, you can let John know or let our Comptroller’s Office know to pay for this. I cannot attend because it is a normal work day for me. If you have any interest at all in getting together and going to it, please feel free.

**There is nothing to report on the Cell Tower.**

I would ask for a motion to adjourn.

**At 7:18 P. M., a motion was made to adjourn the meeting.**

**Motion: Mr. Donnery   Seconded: Mr. Jannarone   Approved**

Respectfully submitted,

Fran DeWitt  
Recording Secretary

**The next Consolidated Zoning Board of Appeals meeting is  
Monday, July 16, 2012**